

Agenda

Item #7

Draft



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Policy on Paying Campaign Funds to Family Members

This memorandum describes the policies and procedures regarding the use of campaign funds to pay a member of the candidate's family or household, which were established by the Maine Ethics Commission pursuant to statutory changes enacted by during the First Special Session of the 124th Legislature (P.L. 2007, c. 567 and c. 571 (eff. July 18, 2008)).

Disclosing a Payment to a Member of the Candidate's Family or Household (applies to gubernatorial, legislative, and county candidates)

- *Traditionally financed candidates.* If a candidate makes a payment of campaign funds to a member of the candidate's household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for expenditures) of the campaign finance report.
- *Maine Clean Election Act candidates.* If a candidate makes a payment of Maine Clean Election Act funds to a member of the candidate's "immediate family" (defined below), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family or household relationship (e.g., "spouse," "domestic partner," "brother," "roommate," or "business owned by daughter") in the remarks section of Schedule B of the campaign finance report.

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, or domestic partner. See 21-A M.R.S.A. §§ 1(20) & 1122(4-A).

Restrictions on Maine Clean Election Act Candidates

Legal Restriction (21-A M.R.S.A. § 1125(6-B), enacted by P.L. 2007, c. 567 (eff. July 18, 2008))

This new statute provides that Maine Clean Election Act (MCEA) candidates may not use public campaign funds to pay:

- the candidate
- a member of the candidate's household,
- or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest

unless the candidate submits evidence to the Commission that the expenditure will be made:

- for a legitimate campaign-related purpose;
- to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and
- in an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

Timing of Submitting Evidence

If a MCEA candidate intends to spend more than a total of \$250 to an individual or entity covered by subsection 1125(6-B) during the course of a campaign, the candidate must submit the evidence required by that statute before entering into an obligation to the payee. If the total payments from the campaign to a covered individual or entity will be \$250 or less, the evidence of compliance with 21-A M.R.S.A. § 1125(6-B) may be submitted to the Commission at the next campaign finance reporting deadline after the payment is made. The Commission shall consider this evidence to determine whether the expenditure meets the requirements of 21-A M.R.S.A. § 1125(6-B).

Provisional Approval by Commission Staff

A candidate may seek provisional approval by the Commission staff by submitting the evidence required by 21-A M.R.S.A. § 1125(6-B). The staff shall grant provisional approval only if the weight of the evidence presented indicates that the expenditure will meet the requirements of 21-A M.R.S.A. § 1125(6-B). Any provisional approval or rejection by the staff will be reviewed by the Commission members at their next regularly scheduled meeting.

Normal Course of Occupation or Business

Maine Clean Election Act candidates may use public campaign funds to pay an individual or business covered by subsection 1125(6-B) for goods or services, if the individual or entity provides those goods or services as part of their current or recent employment. An individual or entity will not be considered to meet the normal course of business requirement of 21-A M.R.S.A. § 1125(6-B)(B) if it has been more than two years prior to the proposed expenditure since that individual or entity provided these types of goods or services as a part of their occupation or business.

An individual or business does not need to provide these types of goods or services as their full-time occupation or primary business activity. For example, an individual who performs some graphics and layout work as part of their paid employment could provide similar services on a paid basis to a Maine Clean Election Act candidate who lives in the same household, provided that the other requirements of 21-A M.R.S.A. § 1125(6-B)(B) are met.

Reimbursing for Goods or Services Advanced to the Campaign

If a MCEA candidate or a supporter of that candidate uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate may reimburse the candidate or supporter, provided that the reimbursement occurs in the same campaign finance reporting period as payment to the vendor. This reimbursement is permitted even if the supporter resides in the same household as the candidate.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Ensure Integrity in Financing Publicly Funded Campaigns

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1017, sub-§5, as amended by PL 2007, c. 443, Pt. A, §16, is further amended to read:

5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. If the payee is a member of the candidate's household, the candidate must disclose the family relationship in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

Sec. 2. 21-A MRSA §1125, sub-§6-B is enacted to read:

6-B. Expenditures as payment to household members. A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's household or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest, unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made:

- A. For a legitimate campaign-related purpose;
- B. To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and
- C. In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

Effective 90 days following adjournment of the 123rd Legislature, Second Regular Session, unless otherwise indicated.

Chapter 571,
see § 12 only
(effective 4/7/08)

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An Act To Improve the Campaign Finance Laws and Their Administration

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, legislation enacted during the First Regular Session of the 123rd Legislature created an error in statute regarding qualifying contributions under the Maine Clean Election Act; and

Whereas, proper oversight of the collection of qualifying contributions is necessary to ensure appropriate distribution of taxpayer funds under the Maine Clean Election Act; and

Whereas, the 2008 election cycle for candidates for the 124th Legislature is already underway; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §1002, sub-§2, as amended by PL 2005, c. 271, §1, is further amended to read:

2. Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, or who now holds an elective county, state or federal office, who is an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign. A person may not serve on the commission who is an officer, director, employee or primary decision maker of a party committee, political action committee or candidate committee authorized under Title 21-A, section 1013-A, subsection 1, paragraph B.

Sec. 2. 1 MRSA §1002, sub-§2-A is enacted to read:

2-A. Conflict of interest. This subsection governs conflicts of interest of members of the commission.

A. A member of the commission has a conflict of interest in a matter before the commission if the member has a business or close political relationship with a party to the matter. A close political relationship exists when a member has significant past or ongoing involvement with a political committee or a candidate, as defined in Title 21-A, section 1, subsection 30 and subsection 5, respectively, or other organization involved in the matter, that would lead a reasonable person to believe that the member is unable to objectively consider the matter. A close political relationship is not created by making a contribution to a political committee, organization or candidate; party enrollment status; or mere membership in an organization involved in the matter.

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows:

- A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;
- B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or
- C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.

Sec. 12. 21-A MRSA §1125, sub-§12, as enacted by IB 1995, c. 1, §17, is amended to read:

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family relationship in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 7, 2008.